



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/172479

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2016, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Outagamie County Department of Human Services in regard to Foster Care, a telephonic hearing was held on April 28, 2016, from Milwaukee, Wisconsin.

The issue for determination is whether the foster care licensing agency correctly denied petitioner a foster care license.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
Outagamie County Department of Human Services
401 S. Elm Street
Appleton, WI 54911-5985

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Outagamie County.
2. On or about February 1, 2016 petitioner applied for a foster care license.
3. Petitioner's husband, [REDACTED], was convicted of Causing Bodily Harm To A Child under Wis. Stat. §948.03(2)(b), a felony. See Exhibit 1. He and the petitioner have several other convictions as well.
4. On February 19, 2016 the foster care licensing agency issued notice to petitioner that her foster care license was denied. See Exhibit 2.

DISCUSSION

Chapter DCF 56 of the Wisconsin Administrative Code sets forth the licensing requirements for foster homes and foster parents so as to protect the health and safety, and promote the welfare of, the children placed in the homes. See Wis. Stat. §48.67; Wis. Admin. Code §DCF 56.01(1). The protection of children is a paramount goal, the health and safety of children are the paramount concerns, and the best interest of the child is always the paramount consideration. Wis. Stat. §§48.01(1) & (1)(a). When a foster care licensing agency receives a completed application for a foster home license, the licensing agency must either approve the application and issue the license, or deny the application. See Wis. Admin. Code §DCF 56.04(5)(a). If the application for a license is denied, the licensing agency shall give the applicant reasons in writing for the denial and shall provide information on how an appeal may be requested under s. DCF 56.10. *Id.* That occurred in this matter when petitioner's application was denied.

A foster care license may lawfully be denied if the applicant fails to meet the minimum requirements for a license. Wis. Stat. §48.67. In order to meet the minimum requirements for a license, it is necessary to meet all requirements contained in Wisconsin Department of Children and Families (DCF) foster care rules unless an exception has been granted. Wis. Stat. §48.67; Wis. Admin. Code §§DCF 56.02(2) & 56.05(1)(c)1. DCF foster care rules state that an applicant is unqualified to hold a license if the applicant, or any other nonclient resident living in the household, has been convicted of a felony, misdemeanor, or other state or federal offense, the circumstances of which substantially relate to caring for children or operating a foster home, or who is otherwise prohibited from licensure by statute or ch. DHS 12, including any governmental finding that the person misappropriated a client's property. Wis. Admin. Code §DCF 56.05(1)(f)3.b. No exceptions can be granted to this rule. Wis. Admin. Code §DCF 56.02(2)(a)1.

Chapter DHS 12 of the Wisconsin Administrative Code states that certain convictions are bars to receiving a foster care license. Section DHS 12.05(1)(a) refers to the statutes under which the bars to licensure are contained – Wis. Stats. §§48.685 (4m) (b) or 50.065 (4m) (b). Wis. Stats. §48.685(4m)(a) states that a foster care license cannot be issued where the applicant has been convicted of a serious crime. A serious crime includes a violation of Wis. Stat. §948.03(2) which the petitioner's husband was convicted under. See Wis. Admin. Code §DHS 12.03(20) and Wis. Stat. §48.685(1)(c).

While this conviction alone serves as an automatic bar to petitioner's licensure for a foster home, the agency also added that it was denying the application due to the other convictions, and the alcohol and other drug abuse (AODA) history, that the couple has. See Exhibits 1 and 2. A review of the online public records search in Wisconsin confirms this (available online at <https://wcca.wicourts.gov/index.xsl>). The other convictions include, in part, violations of domestic abuse restraining orders, forgery, disorderly conducts, possession of marijuana and drug paraphernalia, and multiple OWI convictions. There were also various CPS reports that the agency reviewed about domestic violence issues. The agency therefore

also denied the application in finding that the petitioner was not determined to be fit and qualified, and that the couple's history of abusing alcohol or drugs related to their history of civil or criminal convictions, did not present as people who exercise sound judgment and display the capacity to successfully nurture foster children. See Wis. Adm. Code §§56.05(1)(a)1, 56.05(1)(b)1.j. & 56.05(1)(e)1.

Petitioner does not dispute any of this, although she tried to minimize the felony for Causing Bodily Harm To A Child under Wis. Stat. §948.03(2)(b) because it happened when her husband was 18 and the victim was 17, and now they are friends. She also testified that she and her husband are on a new path together and things are getting better.

This information is encouraging, but I find that the agency correctly denied the application here. The one conviction is an automatic bar, and I cannot change the law as it is written. I also find that the agency correctly determined that the history in this home does not support a finding that the couple have shown themselves to be fit and qualified as licensed foster parents.

CONCLUSIONS OF LAW

The foster care licensing agency correctly denied petitioner a foster care license.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

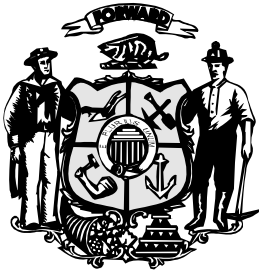
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 31st day of May, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 31, 2016.

Outagamie County Department of Human Services
DCF - Foster Care